IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 753 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KOLI RAMLAL @ RAMJI KALABHAI

Appearance:

MR KP RAVAL, APP for Appellant

MRS SHILPA J UNWALLA for Respondent No. 1

MR AR THACKER for Respondent No. 2, 3

CORAM : MR.JUSTICE K.R.VYAS

and

MR.JUSTICE J.R.VORA

Date of decision: 05/09/2000

ORAL JUDGEMENT : [PER: VORA, J.]

1. This Appeal is filed by the State against the judgment and order of the learned Sessions Judge, Bhavnagar, in Session Case No. 92 of 1984, acquitting all the three respondents herein for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. As per the brief facts of the prosecution case, the present respondents came to be tried in Session Case No. 92 of 1984 by the learned Sessions Judge, Bhavnagar, for the offences punishable under Sections 302, 307 read with Section 34 of the Penal Code. Prosecution story discloses that the incident occurred on 20th May, 1984 at about 2130 hours at night in the Peel Garden, near Malaria Office at Bhavnagar. Complaint of which has been filed by Gopalbhai Chitharbhai, who is injured in this incident. Deceased, in this case is Vinod Dhanji. At the time of incident, complainant injured Gopalbhai Chitharbhai and deceased Vinodbhai were sitting on a bench in the Peel Garden near the Malaria Office. Along with them, three accused were also sitting on the bench. Accused No.1 i.e. respondent No.1 Ramlal was serving as Chowkidar in Peel Garden and deceased Vinod Dhanji and Ramlal entered into some altercations about some previous matter between them. Complainant Gopalbhai Chitharbhai intervened to prevent both of them from entering into hot exchanges. Due to this, all the three respondents original accused were provoked and accused No.1 Ramlal took out knife and inflicted a blow of knife on left side of the body of the complainant. Respondent No.1 Ramlal also inflicted another blow on the right side of the back of the complainant. Respondent No.2 Jagdish Ravjibhai had a stick in his hand and he inflicted two blows on the complainant - Gopalbhai with the stick. One of the blows hit the right wrist of the complainant and the other was hit on the head. Complainant due to these injuries, was fallen down on the ground. Thereafter, all the three accused - respondents herein attacked deceased Vinod Dhanji. Accused No.1 Ramlal inflicted knife blow on the body of Vinod Dhanji, accused No.2 Jagdish Ravjibhai inflicted stick blows on the body of the complainant, accused No.3 Rasik Ravjibhai was beating Vinod Dhanji with fist blows and kicks. At that juncture, complainant shouted loudly and on hearing shouts, Niranjan Karsanbhai, PW6, Nitin Ramaniklal, PW4, and Vijaysinh Udaisinh, PW 5, came running on the spot and on seeing them all the three accused ran way from the scene of

incident. Complainant was taken to Government hospital on cycle by PW6 Niranjanbhai for treatment. As per the prosecution case, while complainant was taken to hospital, Kishanbhai Dhanji Koli, brother of the deceased Vinod Dhanji, met in the Peel Garden to Niranjanbhai,PW5, and he was told by PW 5 that Vinod Dhanji was beaten by accused and was lying on the ground. At about 2340 hours on the same day at night Bhavnagar Police Station `A'Division PI Jagdevsinh Bhagwansinh Chouhan recorded the complaint of Gopalbhai Chitarbhai and Vinod Dhanji was found dead and was brought to the hospital. Post mortem, according to Dr.Bhagwanbhai Gagjibhai Donda, PW2, was performed by him on 21st May, 1984 at 1815 a.m. Basing the complaint of Gopalbhai, a crime under Sections 302, 307 read with 34 of the Indian Penal Code, was registered against the present respondents. Investigation of which was taken over by PW 12 Jagadevsinh Bhagwansinh, Police Inspector, `A' Division, Bhavnagar. He draw the panchnama of scene of offence, recorded the statements of eye witnesses and other witnesses, draw the panchnama of the place from where the dead body of Vinodbhai Dhanji was recovered. Panchnamas of discovery of knife and stick from accused Nos. 1 and 2 were also drawn and a chargee sheet came to be filed in the Court of learned J.M.F.C., Bhavnagar, for the above mentioned charges against this three respondents, and in turn, the case was committed to the Court of Sessions, which was numbered as Session Case No. 92 of 1984.

3. Charge against the accused was framed vide Exh.4 on 17th December, 1984, under Section 307 read with Section 34 of the Indian Penal Code for the injuries caused to the complainant and a charge under Section 302 read with Section 34 was framed against respondents for causing murder of Vinodbhai. Respondents pleaded not guilty to the above charges and the prosecution therefore led evidence.

4. Prosecution examined as many as 12 witnesses and produced documents to prove the charges levelled against the accused. After hearing the prosecution as well as the defence, vide his judgment and order dated 26th April, 1985, in the above Session Case, learned Sessions Judge, Bhavnagar, came to the conclusion that the prosecution could not prove the case against the accused under Section 302 read with Section 34 for causing murder of Vinodbhai, and hence, learned Sessions Judge acquitted the accused for the above charges punishable under Section 302 read with Section 34 for causing murder of deceased Vinodbhai Dhanji while learned Sessions Judge convicted the present respondents No.1 under Section 324

and respondent No.2 under Section 323 for causing injuries to the complainant, and respondent No.3 original accused No.3 was acquitted for the charges levelled against him under Section 307 read with Section 34 of the IPC. Respondent No.1 was punished for the rigorous imprisonment of one year and fine of Rs. 500 while respondent No.2 was punished for the imprisonment of till rising of the court and was fined for Rs. 100.

5. Being aggrieved by the above said judgment and order of acquittal of the present respondents for the charges punishable under Sections 302 read with section 34 of the IPC for causing murder of Vinodbhai Dhanji, this Appeal has been preferred by the State against the present respondents.

6. Learned APP Mr.K.P.Raval for the State, learned Advocate Ms.Shilpa J.Unwalla for respondent No.1 and learned Advocate Mr.A.R.Thacker for respondents No. 2 and 3 were heard at length.

7. Learned APP Mr. K.P.Raval has vehemently urged that the acquittal of the present respondents by the learned Sessions Judge for the charges under Section 302 read with Section 34 of the Indian Penal Code is patently erroneous. Learned APP Mr. Raval has further urged that there are 4 eye witnesses to this incident. Out of them, one is injured witness. Learned Sessions Judge also believed the presence of the injured witness at the place of incident and still the respondents came to be acquitted. It was urged that the other eye witnesses PW4 Nitin Ramaniklal, PW5 Vijaysinh Udaisinh and PW 6 Niranjan Karsanbhai, have deposed to the fact that accused No.1 inflicted knife blows to the deceased, Respondent No.2 inflicted stick blows and respondent No.3 inflicted fist and kick blows to the deceased. Mr.Raval urged that panchnama of scene of offence reveals blood stain marks on the wooden bench. Mr. Raval further urges that there is no reason to discard the evidence of eye witnesses to the incident particularly the evidence of injured witness, whose presence is established at the scene of offence. It was urged that minor contradictions in the investigation by the Investigating Officer would not destroy the prosecution case. It is urged that it is amply established by PW2 Dr. Bhagwanbhai that deceased Vinodbhai died due to the injuries which he received. Therefore, it is contended that the Appeal be allowed and the acquittal be reversed and the respondents be convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code. While, on the other hand, learned advocates for the respondents

have supported the judgment and the reasoning of the trial judge.

8. Having regard to the rival contentions and forceful argument of learned APP Mr. Raval, we have extensively travelled through the record of the case entirely along with learned APP Mr. Raval. We have carefully examined the testimonial collections of each of the witnesses examined by the prosecution. We appreciated the evidence on record and the circumstances afresh. On doing so, we have noticed glaring infirmities in the prosecution case, which creates doubt in the prosecution story.

9. In this case, the prosecution story unveils a fact which must be taken notice of is the injury received by respondent No.3 herein. In prosecution case, which was submitted to the court for the scrutiny, there was no reference of the injury sustained by respondent No.3. The fact itself warrants that the prosecution must strictly prove all the ingredients after explaining circumstances like injuries on the body of the one of the accused.

10. Having regard to the above circumstances, when we start with the origin of the quarrel taken place, we found that the evidence of the prosecution in this regard is clumsy. Normally, motive of a crime is not material when the crime is proved by cogent evidence, but when, the circumstances of the case calls for to look at the motive, it is always necessary to take into consideration motive also along with the other evidence. Here in this case, when we are examining the origin of the dispute, the same relates to the motive of the crime. This is necessary because the prosecution must be fair to disclose the incident as it had happened because respondent No.3 and accused has also received injury. In the instance case when we refer to the complaint at Exh. Mark-`A', the complainant has stated that some exchange of words taken place between deceased Vinodbhai Dhanji and accused No.1 Ramlal. As per the prosecution case, this was the origin of the quarrel. While complainant was examined before the court, he disclosed that exchange of words between deceased and respondent No.1 was regarding the job of the deceased. Therefore, the evidence is ambiguous about the origin of quarrel and how the incident started. In other words, the prosecution could not establish motive for the dispute which would

lend credence to the remaining prosecution story. The evidence of the complainant, on the contrary, leaves an imprint in prosecution case that the prosecution witnesses have something to conceal about how the quarrel was originated. This is a doubtful circumstance with reference to the fact that one of the accused has received injuries at the time of the incident, ultimately this leads to presumption that prosecution witnesses are not truthful. Origin of quarrel i.e. what was exchanged between accused No.1 and deceased was required to be proved by the prosecution to reveal genesis of prosecution story especially when one of the accused has received injuries and probably in the same incident.

11. On scrutiny, we have also found over enthusiastic attempt on the part of the eye witnesses to depose about the incident. A serious doubt arises whether PW-4 Nitin Ramaniklal, PW-6 Niranjan Karsanbhai and PW-5 Vijaysinh Udaisinh were in fact were the witnesses of the incident. In Complaint Mark-`A' it has been specifically stated by the complainant Gopalbhai that at the inception complainant Gopalbhai and deceased Vinodbhai and three accused were sitting at the bench. On altercations taken place between respondent No.1 and the deceased Vinodbhai and on intervening by the complainant he met with two knife blows and two stick blows by respondent No.1 and 2 respectively. Thereafter, all the respondents started attacking deceased Vinodbhai. At that juncture, complainant shouted, and on hearing the shouts, other eye witnesses PW-4 Nitin Ramaniklal, PW-5 Vijasinh Udaisinh and PW-6 Niranjan Karsanbhai came running on the place. The complainant has attempted to change his version and to improve to the extent to say that three eye witnesses of the incident were sitting on the bench at the time of the incident and this is the version of three witnesses PW 4, 5 and 6. Therefore, the attempt on the part of complainant to make PW-4, 5 and 6 witnesses of the incident must be viewed with a doubt because this is a changed version of the complainant. This leads us to believe that it is highly doubtful that PW4, PW5 and PW6 were the eye witnesses of the incident and their evidence regarding the blows inflicted by the respondents No.1, 2 and 3 is not believable. We are not able to give credit to PW 4, 5 and 6 to be reliable eye witnesses of the incident who beyond reasonable doubt observed the alleged attack by the respondents on the deceased or that they had in the above circumstances, opportunity to witness the incident.

12. Not only that so far as the evidence of the complainant regarding injuries to the deceased Vinodbhai

Dhanji is concerned, the same is uncertain and dubious. The complainant, PW 3, Exh.24, has stated that after he fallen down on the ground, all the three respondents vehemently attacked Vinodbhai Dhanji. In his complaint also, the complainant has stated that Respondent No.1 inflicted knife blows and respondent No.2 inflicted stick blows and respondent No.3 inflicted fist and kick blows on the deceased. The version of the complainant is required to be tested through the touchstone of probabilities. According to complainant, he sustained two knife blows and he was fallen down. The fact remains that PW 4 Nitin Ramaniklal took the complainant to the hospital on cycle and then the question arises whether in such condition, the complainant had an opportunity to observe what was being done to the deceased and to depose the same in a mathematical manner. Therefore, so far as the evidence of the prosecution regarding injuries of the deceased Vinodbhai Dhanji is concerned, prosecution relies on the evidence of PW, 4, 5 and 6 and the complainant. As aforesaid, the evidence of PW 4, 5, and 6 is not found reliable, while the evidence of the complainant is also not free from doubt as aforesaid.

13. All the above mentioned circumstances, in the evidence of prosecution is required to be viewed along with two very strong serious circumstances established in the prosecution case. One of them is injury to respondent No.3 accused and the second circumstance is recovery of dead body of Vinodbhai Dhanji at the distance of about 300 feet from the scene of offence near the residence of respondent No.1.

14. Surprisingly, none of the prosecution witnesses including injured witness disclose that respondent No.3 Rasik Ravjibhai received injuries of knife blows. When we turn to the evidence of Investigating Officer, PW 12, it is revealed that respondent No.3 Rasik Ravjibhai had also filed a complaint against the complainant for the injuries which he received during the same incident and the complaint of the Rasik Ravjibhai was also recorded by Jagadevsinh Bhagwansinh Chouhan, PI, `A' Division Police Station, Bhavnagar, who is the Investigating Officer in this case also. Investigating Officer also admitted that it was revealed during his investigation that deceased Vinod and the complainant Gopal had knife in their pockets and deceased Vinodbhai inflicted knife blows to respondent No.3. Further, in his deposition in para 16, Exh.41, PW 12 Jagdevsinh Bhagwansinh further states that from the night on which incident occurred, respondent No.3 was under his escort. This denotes that soon after the incident, respondent No.3 was under police escort

because he was named as accused in this case. Not only that this Investigating Officer has also deposed that respondent No.3 was taken to hospital for the treatment under the police escort and, therefore, though he was available, was not arrested and he was taking treatment in the hospital. Though the complaint given by respondent No.3 herein was given on the next day, but from the deposition of the Investigating Officer, the fact remains that the respondent No.3 was found with the injuries on his body soon after the incident and thereafter he took treatment and during this period he was found continuous in police escort and respondent No.3 also gave a complaint stating that deceased inflicted knife blows on him.

15. The prosecution witnesses have failed to explain the above mentioned circumstances. When the injuries on the body of the accused is not explained, inescapable inference would be the witnesses conceal the genesis of the prosecution story. A doubt in these circumstances is created that the prosecution witnesses do not state or depose in the true manner in which the incident occurred and, therefore, as aforesaid, it was absolutely necessary in these circumstances for the prosecution to establish beyond reasonable doubt what altercation exactly took place between respondent No.1 and deceased Vinodbhai Dhanji at the initiation of the quarrel and what was the motive behind this incident. The fact also remains that the injuries on the body of respondent No.3 remains unexplained. It is an established law especially in murder case that the Non-explanation of injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inference :

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(iii) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

16. We may mention here that a weak attempt to

explain injuries has been made by PW 4 and PW6, Nitin Ramaniklal, Exh.25 and Niranjan Karsanbhai, Exh.29, in their depositions and they have stated that after being attacked by all the three accused and after having received the injuries of knife blows and stick blows when the respondents were running back, the deceased Vinodbhai stood up, he took 4 - 5 steps and inflicted a knife blow on respondent No.3. However, this version of the witnesses PW-4 and PW-5 is an improved version, which has been proved by the defence that this was not the version stated by the witnesses before the police. If we test this version again on a touchstone of probabilities, then the question arises is, then the knife which is referred by these witnesses, which was with Vinodbhai came from where, and if the knife was with Vinodbhai, then would it be possible that he would not take out the knife even after he received 7 -8 knife blows from respondent No.1 and only the deceased would take out the knife after the incident is almost over and when the accused were fleeing from the scene of offence . In this regard, on appreciation of evidence, the version of prosecution witnesses that after the incident was almost over, deceased inflicted knife blows to respondent No.3 is improbable. The net result of this exercise would be that the respondent No.3 though received injuries in incident, but this fact has been concealed by the prosecution witnesses for the reasons best known to them. Ultimately, we believe that the prosecution witnesses conceal the genesis of the story and the true manner in which the incident occurred, has not been deposed by the prosecution witnesses and benefit of the same must go to the accused.

17. The other glaring infirmity in prosecution case is a fact that the body of the deceased was recovered at a distance of 300 feet from the scene of incident. Prosecution witnesses particularly PW 4 and PW 6 deposed that after receiving the injuries deceased fallen on the ground. This is the scene of offence which is near the wooden bench and wooden bench in turn is near the Office of the Malaria Department. When we look at the deposition of the Investigation Officer, it amply reveals that the dead body of the deceased was recovered in a pit near the house of accused No.1. A panchnama which is produced at Exh. 42 is drawn by the Investigating Officer, which denotes that the place from where the dead body was shown by Kisanbhai Dhanji, brother of the deceased and that is a pit near the house of accused No.1. PW9, Exh.32, Haresh Natwarlal specifically states in his deposition that from Malaria Office i.e. scene of offence, the house of Accused No.1 Ramlal is situated at

the distance of about 150 to 200 steps. If we take this fact into consideration, then it is clear that from the scene of offence, house of accused No.1 Ramlal is situated at about 300 feet at least. Meaning thereby that the dead body which was recovered from near the house of accused No.1 - Ramlal, it necessarily suggests that it was at a distance of about 300 feet away from the alleged scene of offence. Now therefore the question would arise that how the dead body was recovered at a distance of 300 feet from the scene of offence. Pool of dried blood was also noticed in the pit by the Investigating Officer - Exh.42 from where the dead body was recovered. Not only that, the panchnama of scene of offence denotes that there were no blood stains on the ground of scene of offence where witnesses state that the deceased fallen down twice.

18. All these circumstances when taken together and appreciated in totality, it clearly appears to us that the prosecution witnesses are not reliable and truthful and do not depose truly the manner in which the incident occurred because the recovery of dead body at the distance of 300 feet from the scene of offence and injury on the body of respondent No.3 create doubt in the prosecution story. We are conscious that ordinarily testimonies of injured eye witnesses should be believed, but at the same time, care must be taken that the story of an injured eye witnesses is in consonance with the remaining prosecution story and the say of the injured witness can safely be relied on. In this case, complainant Gopalbhai Chitharbhai though an injured witness, his presence at the scene of offence is established but his testimony to the extent of causing injuries to the deceased inspire no confidence at all because for the circumstance as aforesaid, no plausible explanation is given either by him or any of the prosecution witnesses.

19. So far as the injuries on the body of the complainant is concerned, his presence is believed by the trial court to the extent of injuries caused to him and respondents No.1 and 2 herein are convicted by the Trial Judge under Section 324 and under Section 323 respectively. There is no appeal preferred by accused No.1 and accused No.2 i.e. respondents No. 1 and 2 respectively herein, regarding that part of the judgment relating to their conviction and therefore that part of the judgment is not within our purview to consider in this acquittal appeal. This appeal against acquittal for the charges under Section 302 read with Section 34 of the

Indian Penal Code is preferred by the State. So far as this part of the judgment of the trial court is concerned, we are in total agreement with the reasoning of the Trial Judge though we have appreciated the evidence and circumstances of the case afresh. For the reasons aforesaid, therefore, acquittal order of the Trial Judge in respect of all the present respondents for the charge of murder of deceased Vinodbhai Dhanji requires no intervention and interference at all.

20. In the result this Appeal stands dismissed. The bailable warrants issued against the respondents shall stand cancelled.

(K. R. Vyas,J.) (J.R. Vora, J.)

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